IN THE HIGH COURT OF JUDIATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.837 OF 1989

The State of Maharashtra .. Appellant.

V.

Jagannath Kisan Mane,
aged 21 years, R/o.Dharampuri,
Taluka Malshiras,
District Solapur .. Respondent.

Shri S.R.Borulkar P.P. for the appellant.
Shri R.V.More for the respondent.

CORAM : SMT.RANJANA DESAI &
D.B.BHOSALE, JJ.

DATED : 5TH AUGUST, 2005.

JUDGMENT: (PER D.B.BHOSALE, J.)

1. This appeal is directed against the judgment and order dated 30th September, 1989 rendered by the IIIrd Additional Sessions Judge, Solapur in Sessions Case No.107 of 1989 acquitting the respondent accused of the offence punishable under section 302 of the Indian Penal Code. The accused was charged and tried for allegedly committing murder of Vilas Madhav Patil on 11.2.1989 at about 6.45 a.m. by means of an axe.

2. The facts necessary to be noticed for disposal of this appeal against acquittal, briefly stated, are that deceased - Vilas and the accused,

both allegedly had illicit relations with one Jayashri, a daughter of the Police Patil of village-Dharmapuri. On that count the relations between the accused and the deceased - Vilas were strained and frequently they used to have quarrels. One of such quarrels took place at the engagement ceremony of the brother of the deceased when the accused was allegedly insulted by the deceased over taking of meals in the said ceremony. The accused, therefore, had grudge against deceased - Vilas. The case set up by the prosecution is that on 11.2.1989 in the morning the accused left the house with an axe and a towel tied on his head. He was wearing white pyjama and snuff coloured shirt. Deceased - Vilas, who used to supply milk on his bicycle to the milk dairy and his brother in the village, was also seen on 11.2.1989 going towards the mories on his bicycle by Popat Karche (PW.9). The accused was also seen going towards the canal by Kashinath Chopde (PW.16) with an axe in his hand. Nobody has seen the actual assault on deceased - Vilas at about 6.45 a.m. on 11.2.1989. However, according to the prosecution, Ramchandra Karche (PW.17) had seen the accused fleeing from the scene of offence. Yadavrao Patil (PW.8) who is the complainant in the case was informed by Mahadeo Nigade and Gena Masugade (PW.13) that Vilas was

lying in the morie with bleeding injuries. Yadavrao (PW.8) alongwith one Lalla immediately rushed to the scene of offence by a truck. When Yadavrao Patil (PW.8) reached the morie, where Vilas was lying, some boys lifted him and kept in the truck. He was immediately rushed to the hospital at Natepute. Looking to the nature of injuries sustained by Vilas, the doctor at Natepute advised to take him to the Civil Hospital, Solapur. From Natepute, Vilas was taken to Solapur in a jeep. Yadavrao Patil did not accompany Vilas further. However, he lodged a complaint at Natepute police outpost. In pursuance of the said complaint lodged by Yadavrao Patil (PW.8) the investigation was set in motion.

3. The complaint was lodged against an unknown person since at that stage the name of the accused had not been revealed as assailant. The accused, however, came to be arrested on 12.2.1989. His blood stained clothes were attached under the panchanama Exhibit-19. One handwritten unsigned note, which in the record is described as a chit (Exhibit-26), (for short "the note") was found in the pocket of his trouser (pyjama) in which he had allegedly confessed that he murdered Vilas for the reasons stated therein. The evidence on record

reveals that a towel and a pair of sleeper of the accused which were lying at the scene of offence, were collected by Chagan Patil (PW.15) on 11.2.1989. He intended to hand over those articles to the Police Patil but since he was not available he handed them over to Dashrath Koli (PW.14). Dashrath Koli in turn produced those articles before the police on 12.2.1989 which were attached under panchanama Exhibit-21. Further the panchanama of the scene of offence and recovery of an axe were drawn. The body of Vilas, after collecting his blood stained clothes and blood, was sent for autopsy. The autopsy report reveals that Vilas died due to head injuries. All articles attached under different panchnamas were sent to Chemical Analyser. The report of C.A. reveals that the blood of the deceased was of "O" group whereas blood of the accused is of "B" group. After completing the investigation the chargesheet was submitted and thereafter the case was committed to the Sessions Court where the accused was tried and acquitted of the offence under section 302. The defence propounded by the accused in the course of trial was of total denial.

4. Admittedly, there was no direct evidence against the accused. To bring home the guilt of

the accused, the prosecution examined as many as 20 witnesses in support of the following circumstances: motive; extra judicial confession; recovery of blood stained clothes (Art.9 and 10) of the accused and chit (Art.11) found in the pocket of the trouser (pyjama); recovery of an axe (Art.17); attachment of sleeper and towel (Art.7 and 8) of the accused; C.A. report and testimonies of Kashinath Chopade (PW.16) and Ramchandra Karche (PW.17) who claim that they had seen the accused before and after the alleged occurrence. To prove the motive the prosecution has examined Hanmant Rupnavar (PW.18) and Rajkumar Patil (PW.19) who speak about illicit relation of the accused with Jayashri. To prove the recovery of the note (Exhibit-26) and to prove extra judicial confession made by the accused therein the prosecution has examined Mohan More (PW.2) pancha witness, and Allabaksh Sayyed (PW.5) another pancha in whose presence the samples of handwriting of the accused were collected and the report of the handwriting expert. To prove the recovery of an axe at the instance of the accused the prosecution examined Duryodhan Deshmukh (PW.4). Shivaji Sool (PW.3) and Dashrath Koli (PW.14) were examined to prove the attachment of sleeper and blood stained towel of the accused. The trial Court after

considering the entire evidence on record has acquitted the accused holding that the circumstantial evidence relied upon by the prosecution does not inspire confidence and is not sufficient to prove the charge against the accused beyond reasonable doubt. Insofar as extra judicial confession made by the accused in the note (Exhibit-26) is concerned, the learned Judge held that it was very weak type of evidence and cannot be relied upon to base the conviction under section 302. Even the evidence of other witnesses and in particular Kashinath Chopade (PW.16) and Ramchandra Karche (PW.17) who had seen the accused before and after the alleged incident has also been discarded holding that merely because the accused was seen by these witnesses does not mean that he committed the murder of Vilas. The trial Court further held that the prosecution has miserably failed to prove the motive inasmuch as Jayashri and Police Patil were not examined as witnesses. Insofar as recovery of an axe is concerned, the learned Judge seems to have discarded that piece of evidence holding that recovery of the weapon by itself is not sufficient to connect the accused with the alleged murder if the substantive evidence is not reliable and truthful.

5. Mr.Borulkar, learned Public Prosecutor took us through the entire evidence and in particular the evidence of the witnesses referred to in the last paragraph and submitted that all the circumstances relied upon by the prosecution are proved beyond reasonable doubt. The trial Court did not consider the evidence led by the prosecution in proper perspective and as consequence thereof arrived at perverse finding. Insofar as extra judicial confession is concerned, he submitted that it was wrongly discarded by the trial Court. In support of this contention a heavy reliance placed upon the judgments of the Apex Court in **Piara Singh and Others V. State of Punjab AIR 1977 SC 2274 and Kuldeep Singh and Others V. State of Rajasthan (2000) 5 SCC 7**. He submitted that the prosecution has proved the handwriting on the note (Exhibit-26) beyond reasonable doubt and, therefore, the learned Judge ought not to have brushed aside this piece of evidence by merely observing that it was a weak type of evidence. He further submitted that other circumstance such as recovery of the blood stained clothes of the accused, recovery of the axe at the instance of the accused, evidence of Kashinath (PW.16) and Ramchandra Karche (PW.17) who had seen the accused before and after the occurrence, the evidence of

Hanmant Rupnavar (PW.18) and Rajkumar Patil (PW.19) who speak about the alleged motive clearly lend assurance to the extra judicial confession made by the accused in writing and that clearly point to the guilt of the accused. On the other hand Mr.More, learned counsel for the accused vehemently submitted that the prosecution has not proved the basic links such as extra judicial confession and motive beyond reasonable doubt and since these two links are missing from the chain of circumstances the accused cannot be said to have committed alleged offence. He further submitted that the findings recorded by the learned trial Judge and the conclusion arrived at by him in any case cannot be termed as perverse and no manifest illegality whatsoever has been committed by him by acquitting the accused. He placed heavy reliance upon the judgment of this Court in **State of Maharashtra V. Haribhua Krishnaji Deshmukh and Others 2003 Cri.L.J.3639** to contend that in any case it cannot be said that the appreciation of the evidence by the trial Court is perverse or the conclusion drawn by it cannot be drawn on any view of the evidence. There is no error, according to Mr.More, in application of law by the learned Judge nor there is any substantive omission on his part to consider the evidence existing on record. He, therefore,

submitted that the view taken by the acquitting court is permissible on the evidence on record and, therefore, this court cannot interfere with the impugned judgment inasmuch as the order of acquittal has not resulted in miscarriage of justice.

6. Before we consider the submissions advanced by the learned counsel appearing for the parties and the evidence on record it would be relevant to notice the settled position of law to be applied in dealing with the appeal against acquittal. It is now well settled that though the appellate court has same powers as the trial Court of appreciating evidence and coming to its own conclusion on questions of fact, it should not interfere with an acquittal, unless it finds that the view taken by the trial Court is unreasonable or perverse. If the view taken by the trial Court is a reasonably possible view, the appellate court should not disturb an acquittal merely because it thinks that another view is better or more preferrable. It is, thus, clear that unless the conclusions of the trial Court drawn on the evidence on record are found to be unreasonable, perverse or unsustainable the High Court should not interfere with the order of acquittal. This position of law as settled by

the Apex Court has been uniformly followed and applied in large number of cases by this Court. This Court in **Haribhau Krishnaji Deshmukh's** case (supra) had an occasion to consider the powers of the Appellate Court under section 378 of Cr.P.C. After considering the entire case law on the point as settled by the Privy Council and the Supreme Court beginning with first available decision of the Privy Council which is reported in **AIR 1934 PC Page 227** till **AIR 1996 SC 2478** in paragraph 22 of the said judgment, summarised the law emerged from all the judgments referred to therein held thus :

> "22. In our opinion, the scope and extent of powers of the High Court under section 378 of the 1978 Code is well defined and has been disclosed by the above referred judgment of the Supreme Court of India. In our opinion, the consistent and well settled law on the point is that the High Court can interfere with the order of acquittal only when:
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> (1) The appreciation of evidence by the trial Court is perverse or the conclusion drawn by it cannot be drawn on any view of the evidence.
>
> (2) Where the application of law is improperly done.
>
> (3) Where there is substantial omission to consider the evidence existing on record.
>
> (4) The view taken by the acquitting Court is impermissible on the evidence on record.
>
> (5) If the order of acquittal is allowed to stand it will result in the

miscarriage of justice".

7. We will have, therefore, to apply this test of strong and compelling reasons to interfere with the order of acquittal in the present appeal. In other words we will be applying these principles in the present case to determine whether interference with the order of acquittal impugned in this case is must. In the instant case, we have already narrated the facts and evidence relied upon by the prosecution to bring home the guilt of the accused. We have also recorded that on appreciation of evidence the learned trial Judge came to the conclusion that the prosecution has miserably failed to bring home the guilt and, therefore, proceeded to acquit the accused. To satisfy our conscience we have reappreciated the evidence with assistance of the learned counsel appearing for the parties. We have carefully perused the impugned judgment and reappreciated the evidence of all the witnesses and in particular witnesses referred to in paragraph 4 of this judgment. We agree with the learned trial Judge that the evidence led by the prosecution is not sufficient to prove all the circumstances beyond reasonable doubt. We now proceed to record our reasons for arriving at this conclusion.

8. At the outset we would like to deal with the first two circumstances, namely, motive and extra judicial confession which according to the prosecution were the main links in the chain of circumstances. The prosecution examined Mohan More (PW.2), pancha witness, to prove the arrest panchanama. It reveals from the testimony of this witness and that of the Investigating Officer - Eknath Chakore (PW.20) that the accused was nabbed in the morning on 12.9.1989 and he was taken to the office of Talathi at Dharmapuri at 12.00 noon. The arrest panchanama was, however, drawn between 16.05 and 17.15 hours. The clothes of the accused and the note (Exhibit-26) were attached by the police under panchanama Exhibit-19. The clothes of the accused were a shirt and a trouser (pyjama). Both had blood stains. The note found in the pocket of the trouser (pyjama) was in his handwriting. The handwriting has been proved by the prosecution beyond reasonable doubt and moreover, that has not been disputed by the defence before us. We, therefore, proceed to examine the case of the prosecution by accepting that the handwriting of the note was of the accused. We find it appropriate to quote the official translation of the contents of the chit (Exhibit-26) in extenso to

appreciate the submissions advanced by the learned counsel appearing for the parties as follows:

> . "A reason behind committing murder of Vilas was that he was not letting me to get on (prevail over) hence I committed his murder. Our dispute was going on for one year. However, Hanumant Rupanwar, Pusha Chhaya these three-four persons, who were co-operating him, and as they were against me, they started harassing me. Hence I had to commit his murder".

8.1. It appears that the note was on a torn page of a diary. We fail to understand why one would write such a note after committing a murder and keep it in the pocket. Though it was admittedly in the handwriting of the accused it was not signed by him. What was the occasion or what prompted the accused to write such a note after committing offence is not clear from the evidence led by the prosecution. It is not a case of the prosecution that the accused was in a habit of writing a diary. In fact a careful perusal of the handwriting of the note reflects that the accused had barely studied. When we examined this piece of evidence in the light of the defence the note did not inspire confidence. The accused in defence has stated that the police at the behest of the Police Patil got this note prepared from him by force. He had not written it voluntarily and he denied the contents

thereof. Keeping this in view we examined the evidence of Mohan More (PW.2), the panchnama (Exhibit-19) and the testimony of Chakore (PW.20). We found that the accused was nabbed sometime in the morning on 12.2.1989 and he was taken to the office of Talathi at Dharmapuri around 12.00 noon when Mohan More (PW.2) pancha, the other pancha - Sambhaji Patil and the Investigating Officer - Chakore (PW.20) were present in that office. Admittedly, the panchanama was drawn at 16.05 hours. The delay of four hours in drawing the arrest panchnama has not been explained by the Investigating Officer at all. If he was nabbed in the morning and was taken to the office of Talathi at 12.00 noon, as stated by Mohan More (PW.2), why the panchanama was drawn after 4.00 p.m. on that day. What happened between 12.00 noon and 4.00 p.m. in the office of Talathi has not been stated by the Investigating Officer at all. This probablises the defence that Police Patil, whose married daughter was involved, wanted to keep her away from the alleged incident and also to get rid of the accused and, therefore, got this note prepared by force from the accused. The Police Patil and his daughter Jayashri were not examined by the prosecution. The contents of the note do not make any reference whatsoever to the alleged

motive. There is no reference in the note to Jayashri or his grudge against Vilas on account of his illicit relation with Jayashri. The contents of the notes give altogether different story and/or motive for committing the murder of Vilas which is not even the case of the prosecution. The note (Exhibit-26) refers to Hanumant Rupnavar, Pushpa and Chhaya as the persons who alongwith the deceased used to harass the accused on account of some dispute which was going on for a year. There is no specific reference to the nature of dispute. The prosecution has taken no efforts to find and bring on record the nature of dispute. Hanumant Rupnavar was the only person referred to in the note was examined by the prosecution as PW.18. However, he has not stated anything about the dispute referred to in the note. The note was not even shown to this witness. It is against this backdrop the note undoubtedly, create doubt about its genuineness and the contents thereof. We have perused the evidence of Hanumant (PW.18) and Rajkumar (PW.19), who were examined to prove the motive, as alleged by the prosecution, which in our opinion, looses its significance in the light of the contents of the note. Even otherwise their testimonies do not inspire confidence. The other persons referred to in the note were also not

examined by the prosecution. The note completely destroys the motive as alleged by the prosecution. In our opinion, the contents of the note and the manner in which it was recovered from the possession of the accused and the time gap between nabbing of the accused and his formal arrest undoubtedly creates doubt and in any case it cannot be relied upon to accept the contents thereof as extra judicial confession. The judgment relied upon by the prosecution will not help them in view of our findings in respect of the so-called extra judicial confession. This being so, in our opinion, the two circumstances, namely, extra judicial confession and the motive cannot be said to have been proved beyond reasonable doubt.

9. That takes us to consider the next circumstance, namely, the attachment of clothes of the accused and recovery of the blood stained axe at his instance. The law is well settled that recovery of the article cannot take place of substantive proof against the accused. If the evidence in the nature of extra judicial confession does not appear to us wholly satisfactory the recoveries at the instance of the accused cannot carry prosecution case any further. In other words, the recovery of the weapon and/or other

belongings of the accused itself would not be sufficient to connect the accused with the murder by invoking section 114 of the Evidence Act. In view of the settled position of law, in our opinion, the recovery of the blood stained clothes of the accused and recovery of an axe at his instance would not help the prosecution to connect him with the murder of Vilas. In our opinion, merely because some blood stains on the clothes of the accused match with the blood group of the deceased would also not help the prosecution to connect the accused with the murder of Vilas in the absence of other substantive proof against him. In other words, in the facts of the present case, no adverse inference of guilt can be drawn against the accused from the fact that the blood stains of the blood group of the deceased were found on the clothes of the accused. The main links in the chain of circumstances, namely, extra judicial confession and motive are missing and, therefore, in our opinion, attachment of the blood stained clothes and recovery of the axe alone would not be sufficient to connect the accused with the murder of Vilas. The next circumstance that was relied upon was the production of a sleeper and a towel (Article 7 and 8) by Dashrath Koli (PW.14). According to the evidence of Chagan Patil (PW.15)

the sleeper and towel were lying at the scene of offence which he thought were of the assailant and, therefore, he collected them from the scene of offence with an intention to hand them over to Police Patil. However, Police Patil was not available and, therefore, he handed them over to Dashrath Koli (PW.14). Dashrath Koli (PW.14) produced them before the police. The police attached those articles by drawing panchanama Exhibit-21 in the presence of pancha witness - Shivaji Shool (PW.3). This panchanama (Exhibit-21) was drawn on 12.2.1989 at 15.05 hours. The panchanama of the scene of offence (Ex.17) was drawn on 11.2.1989 at 15.05 hours. Chagan Patil (PW.15), though he does not give the exact time as to when he collected the sleeper and towel from the scene of offence, seems to have collected them in the morning of 11.2.1989 and handed over to PW.4 on the very day. Against this backdrop it sounds very unnatural and also improbable that a person would collect the articles like sleeper and blood stained towel from the scene of offence with a view to preserve them and the person to whom they were handed over with that intention would keep them for more than 24 hours. Why Dashrath Patil (PW.14) did not produce those articles before the police on the same day when he had received them in the morning

on 11.2.1989. Why did he keep those articles with him till 3.00 p.m. on 12.2.1989. Moreover, the prosecution has not made serious efforts to establish that the sleeper and the towel were of the accused. The evidence of the attachment of these articles and of PW.14 and PW.15, in our opinion, is not worthy of credence. It is against this backdrop we find absolutely no fault with the findings recorded by the trial Court in respect of this circumstances and, therefore, we hold that the attachment of the article nos.7 and 8 has not been proved by the prosecution beyond reasonable doubt.

10. We would now like to consider the last circumstance relied upon by the prosecution, namely, evidence of Kashinath Chopade (PW.16) and Ramchandra Karche (PW.17) who claim that they had seen the accused before and after the alleged incident. The learned trial Judge after considering the evidence of these witnesses has held that merely because these witness had seen the accused, does not mean that the accused had allegedly committed the murder of Vilas. Kashinath Chopade (PW.16) has stated that on 11.2.1989 at about 6.30 a.m. when he was returning from the dairy to his house on Pandharpur-Pune road he saw the accused proceeding by tar road and he was

possessing an axe. He further states as to what clothes the accused was wearing and even the colour of his sleeper. However, he does not state to which direction the accused was proceeding. In the cross examination he has stated that he did not feel it necessary to narrate to the police that he had seen the accused before the alleged occurrence though he was aware that murder of Vilas had taken place on 11.2.1989 at 6.45 a.m. He even did not tell anybody that he had seen the accused till his statement was recorded on 16.2.1989. His evidence does not inspire confidence. In our opinion, he is a got up witness whose statement was recorded after more than five days of the alleged occurrence. We do not find it safe to rely on his testimony to hold that the accused was seen by this witness before the alleged incident.

11. Similarly Ramchandra Karche (PW.17) claims that on the date of incident at 7.00 a.m. while he was proceeding to his farm towards Khande Vasti he saw the accused coming from the direction of the morie and running towards the canal. It is very pertinent to note that this witness, who saw the accused after alleged incident, does not state that the clothes of the accused and the axe in his hand were stained with blood as claimed by the

prosecution. His statement was also recorded after five days. He was aware about the murder of Vilas but he did not disclose to anyone that he had seen the accused much less to the police till they recorded his statement after five days. This witness, in our opinion, is not truthful or credible. His evidence will also not help the prosecution to establish the circumstance that the accused was seen after the alleged occurrence with the axe in his hand near the scene of offence. It is thus clear that the prosecution cannot be said to have established even last circumstance.

12. It is well settled that in the cases where the evidence is of circumstantial nature, the circumstances from which conclusion of the guilt is to be drawn should in the first instance be fully established and all the facts so established should be consistent with the hypothesis of the guilt of the accused. The circumstances should be of a conclusive nature and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act

must have been done by the accused. This is settled by the Supreme Court in **Hanumant Vs. State of Madhya Pradesh AIR 1952 SC 343**. This case has been uniformly followed and applied in a large number of cases which rest on circumstantial evidence alone. In the present case, it cannot be said that all the links in the chain are complete. Every link in the chain of the circumstance relied upon by the prosecution in the present case has some or other infirmity or lacuna and, therefore, such evidence cannot be relied upon to base conviction. In any case it cannot be said that the circumstances, in the present case, are of conclusive nature and/or they are sufficient to draw a conclusion of the guilt.

13. In such state of affairs we confirm the finding recorded by the trial Court. In our opinion, the findings recorded and conclusion arrived at by the trial Court are not perverse. There is no strong and compelling reason to interfere with the order of acquittal made on proper appreciation of the evidence on record. We, therefore, dismiss the appeal against acquittal. Bail Bonds, if any, executed under section 390 of Cr.P.C. stands cancelled.

(Smt.Ranjana Desai,J.)

(D.B.Bhosale, J)